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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Pascal JOUBERT DES OUCHES

Application No.: 10/587,337

Filed: July 26, 2006

For: SEMI-RIGID PROTECTIVE HELMET

Group Art Unit: 3765

Examiner: A. ANDERSON

Docket No.: 128855

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the July 13, 2009 Election of Species Requirement, Applicant provisionally elects Species I, with claim 5 reading on elected Species I, Species II, with claims 10 and 11 reading on elected Species II, and Species III, with claim 13 reading on elected Species III, with traverse. Applicant asserts that at least claims 1-4, 7, 12, 16 and 17 are generic to all species.

National stage applications filed under 35 U.S.C. §371 are subject to unity of invention practice as set forth in PCT Rule 13, and are not subject to U.S. restriction practice. *See* MPEP §1893.03(d). PCT Rule 13.1 provides that an "international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept." PCT Rule 13.2 states:

> Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The

> expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

A lack of unity of invention may be apparent "*a priori*," that is, before considering the claims in relation to any prior art, or may only become apparent "*a posteriori*," that is, after taking the prior art into consideration. *See* MPEP §1850(II), quoting *International Search and Preliminary Examination Guidelines* ("ISPE") 10.03. Lack of *a priori* unity of invention only exists if there is no subject matter common to all claims. *Id.* If *a priori* unity of invention exists between the claims, or, in other words, if there is subject matter common to all the claims, a lack of unity of invention may only be established *a posteriori* by showing that the common subject matter does not define a contribution over the prior art. *Id.*

The Election of Species Requirement, on page 3, asserts that Species I, II and III lack the same or corresponding special technical features of the adjustment means, joining means and foam liners that each claim different structures in the claims. However, page 3 also states that independent claim 1, from which all other claims directly or indirectly depend on, is generic to <u>all</u> species. In other words, page 3 of the Office Action simply refers to differences in the species. Thus, the Office Action fails to identify why the species lack common subject matter.

Accordingly, Applicant asserts that Species I, II and III share common subject matter, as discussed above, and therefore, *a priori* unity of invention exists between all the species. Therefore, for the present application, a lack of unity of invention may only be determined *a posteriori*, or in other words, after a search of the prior art has been conducted and it is <u>established that all the elements of the independent claim are known</u>. *See* ISPE 10.07 and 10.08. Thus, since the Election of Species Requirement fails to provide prior art that discloses all the elements of claim 1 a lack of unity of invention <u>*a posteriori*</u> has not been demonstrated.

Thus, withdrawal of the Election of Species Requirement is respectfully requested.

Respectfully submitted,

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JAO:JSP/kjl

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